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28 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

29 JANINE CHANDLER, et al.,

30 Plaintiffs,

31 v.

32 CALIFORNIA DEP'T OF CORRECTIONS
33 AND REHABILITATION, et al.,

34 Defendants.

35 Case No. 1:21-cv-01657-JLT-HBK

36
37 **PROPOSED INTERVENORS' NOTICE**
OF MOTION AND MOTION FOR
LEAVE TO FILE A SUPPLEMENTAL
REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO STRIKE

38
39 Judge: Hon. Jennifer L. Thurston
Courtroom: 4, 7th Floor

1 TO THE COURT, AND THE PARTIES, BY AND THROUGH THEIR COUNSEL OF
2 RECORD:

3 PLEASE TAKE NOTICE that Proposed Intervenors will and hereby do move the Court
4 for leave to file a Supplemental Reply in Support of Defendants' Motion to Strike, Dkt. No. 38,
5 pursuant to Local Rules 137(c) and 230(m). Proposed Intervenors make this request for the
6 narrow purpose of submitting a declaration that counsel for Proposed Intervenors obtained on
7 June 29, 2022 made by Asia Davis, the "A.D" alleged in Plaintiffs' briefs and declarations to
8 have been assaulted by a transgender woman. The declaration shows that Plaintiffs' rumors and
9 accusations of a "May 2022 Alleged Rape" are entirely false. Dkt. No. 36 at 6. *See Huppert*
10 Decl.

11 As explained in the attached declaration, good cause exists to grant this request. *See*
12 Huppert Decl. Proposed Intervenors did not plan to file any Reply in Support of Defendants'
13 Motion to Strike until this declaration, which they received on June 29, came to light. Huppert
14 Decl. ¶7. The declaration was not available to Proposed Intervenors until that date, and Proposed
15 Intervenors' counsel transmitted the declaration to counsel for Plaintiffs and Defendants less than
16 24 hours after obtaining it. Huppert Decl. ¶6, 8. Thus, the inability to file the declaration before
17 the reply deadline on Defendants' Motion to Strike was due to intervening circumstances beyond
18 the Proposed Intervenors' control, and counsel acted promptly to inform the parties of the
19 existence of conclusive evidence demonstrating that the "May 2022 Alleged Rape" simply did not
20 happen.

21 Because Proposed Intervenors' counsel transmitted the declaration to the parties the very
22 next day after they obtained it, and because this request is made only eight days after the original
23 reply deadline, there is little risk of prejudice to Plaintiffs.¹ Plaintiffs themselves did not
24 explicitly request that this Court look at their far-ranging extrinsic evidence and decide the
25 Motions to Dismiss and Strike under a Rule 56 standard until their second Opposition brief on

26

¹ It is within the Court's discretion to consider a declaration submitted with a Reply where it is a
27 "reasonable response" to the opposition. *United States ex rel. Doe v. Biotronik, Inc.*, No. 2:09-
28 CV-3617-KJM-EFB, 2015 WL 6447489, at *3 (E.D. Cal. Oct. 23, 2015), *aff'd in part, appeal
dismissed in part on other grounds sub nom. United States ex rel. Sant v. Biotronik, Inc.*, 716 F.
App'x 590 (9th Cir. 2017).

1 June 16, Dkt. No. 41. Plaintiffs' declarations continue to be inadmissible and improper for the
2 reasons explained in Proposed Intervenors' earlier briefing, Dkt Nos. 32 and 40, and so their
3 request will likely not be granted, further reducing the possibility of prejudice. But the
4 accusations Plaintiffs filed with this Court are scandalous and incendiary, and evidence clearly
5 refuting them should be presented even if the Court will ultimately disregard *all* of the extrinsic
6 evidence.

7 Meet and confer efforts have been exhausted. Pursuant to the Court's standing order,
8 counsel for Proposed Intervenors solicited the parties' position on this Motion by email in a meet
9 and confer communication to which they attached the declaration on June 30, 2022. *See* Huppert
10 Decl. ¶8. In this communication, counsel for Proposed Intervenors also invited Plaintiffs' counsel
11 to withdraw or correct the false allegations and suggestions concerning the nonexistent "May
12 2022 Alleged Rape." *Id.* Plaintiffs' counsel first responded by email on June 30, 2022,
13 indicating that they opposed the motion and declining the invitation to withdraw or correct the
14 statements. Then, on July 5, Plaintiffs' counsel indicated that they did *not* oppose the declaration
15 being filed but that they intended to file it in the context of their own forthcoming motion. Also
16 on July 5, 2022, counsel for Defendants indicated that they did not oppose the request for leave to
17 file the supplemental Reply and the declaration, but that they would not stipulate to the filing of
18 either; they also stated that their position was limited to the Motion to Strike and they opposed
19 further briefing in general.

20 In light of Plaintiffs' June 16 explicit request that the Court consider their declarations and
21 resolve the Motions to Dismiss and Strike under a Rule 56 standard, and being now in possession
22 of a declaration showing the anonymous third-party rumors of a sexual assault by a transgender
23 woman put before this Court by Plaintiffs to be completely false, Proposed Intervenors request
24 permission to correct the record.

25 Pursuant to Local Rule 137(c)'s requirement that, "if a document requires leave of court
26 . . . counsel shall attach the document proposed to be filed as an exhibit to the moving papers
27 seeking such leave and lodge a proposed order," the proposed Reply, the declaration, and a
28 proposed order are attached to this Motion.

1 Dated: July 5, 2022
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Respectfully Submitted,

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4 By: s/ Nora Huppert
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